SAADIAH BINTI JUSOH v. AHMAD BIN JUSOH

[O.C.J. (Arulanandom J.) October 2, 1974]
[Alor Star — Civil Suit No. 64 of 1968]

Land Law — Gift of undivided share in land — Consent of other co-owners not obtained — Non-registration — Gift not perfected — Kedah Land Enactment (No. 56), s. 47.

One Jusoh bin Samad had executed a transfer to his undivided share in a piece of land as a gift to the plaintiff and her brother. The consent of the owners of the other undivided shares had not been obtained and the transfer had not been registered before Jusoh died. The defendant was the administrator of the estate of the deceased. The plaintiff prayed for a declaration that she and her brother were entitled to the undivided share in the land.

Held: in this case the gift had not been perfected as the owner had not divested himself of the title to the property and therefore the claim of the plaintiff must be dismissed.

Case referred to:-

(1) *Chase National Executors & Trustees Corporation* v. *Fry* [1946] 1 Ch. 312.

CIVIL SUIT.

A. Jayadeva for the plaintiff.

R. C. Murugeson for the defendant.

Arulanandom J.: In this case the plaintiff prayed for a declaration that she and her brother Ban bin Jusoh were entitled to the 48/192 undivided shares in the piece of land comprised in Surat Putus Besar No. 61894 Portion No. 80 situate in the Mukim of Tebengau in the District of Kota Star, Kedah. She also prayed for an order that the defendant as administrator of the estate of Yusof alias Jusoh bin Samat alias Jusoh bin Samad (deceased) transfer to herself and her brother the 48/192 undivided shares in the said land. She also asked for accounts and profits.

The facts in this case were very simple. The plaintiff's claim was that the deceased Yusof alias Jusoh bin Samat alias Jusoh bin Samad was her father and sometime before his death in October 1960, he made gifts of various pieces of land to his children and in the course of distribution he executed a transfer of a half undivided share of his interest in the said land to her and the other half to Ban bin Jusoh, son of the deceased. Although the defendant claimed he knew nothing of the transfer I am of the opinion that he was aware of it. This transfer was executed in the office of a solicitor but was neither stamped nor presented for registration. The land still remained in the name of the deceased and when the defendant came to know about it he applied for Letters of Administration as the result of which these proceedings were commenced. The fact that the transfer was executed is not denied but as far as the reason for non presentation for registration is concerned the plaintiff is unable to say why. The court can only surmise that since under the Kedah Land Enactment all co-owners had to sign the memorandum of transfer of any undivided shares and since all co-owners had not signed the memorandum of transfer the transfer could not be presented for registration. The defendant while earlier denying the existence of the transfer later admitted in court that he knew of the existence of a memorandum but he argued that it was invalid and not enforceable as the plaintiff was a volunteer and the gift had not been perfected. The land is being cultivated by a tenant and rentals have been paid to the plaintiff except for the years 1967 and 1968 when the defendant collected the rentals amounting to about $1,600.

The only issue therefore before the court was whether the gift had been perfected and the plaintiff could claim title to the land. Counsel for the defendant relied mainly on his legal submission that the trust is incompletely constituted and that the plaintiff was a volunteer accepting transfer without consideration and since there were ten registered co-owners at the time of the transfer and only five had signed it he submitted that the plaintiff's title could not be established. He referred the court to the leading case of *Chase National Executors And Trustees Corporation* v. *Fry*[1] wherein it was held that the transfer of shares could not be registered after the death of the donor. The question before the court was: Has the owner done everything he could to divest himself of the title? The only answer the court could come to was that he had not. Under section 47 of the Kedah Land Enactment undivided shares cannot be transferred without consent of co-owners. From the circumstances of the transaction it does appear that the deceased transferor was aware of this difficulty and perhaps that was what prompted him to go to the office of the solicitor. In the cases of other transfers to his other children he executed the transfers in the Land Office because no co-owners were involved. According to the plaintiff the executed transfer was given to one Haji Yeop to see to the registration. Haji Yeop was not called before the court and so there is no specific reason given as to why the signatures of other co-owners were not obtained and why the transfer was not registered. Whatever the reason the fact remains that the owner had not done everything to divest himself of the title and create a trust in favour of the plaintiff. The sympathy of the court was with the plaintiff but, however, in view of the law applicable to the issue, the court had no alterantive but to dismiss her suit with costs.

The suit was thereby dismissed with costs.

Appeal dismissed.

Solicitors: *Jayadeva & Zahir; R. C. Murugeson.*